

The showing required to establish the failure to receive an Office communication consists of: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement.¹

Applicants' statement in the petition satisfy items (1) and (2).

Petitioners have also provided a copy of the law firm docket record for 28 November 2005 and the computer docket record for the above-captioned application. A review of both records verify that the Form PCT/DO/EO/905 mailed 26 September 2005 was not received and docketed. This evidence is sufficient to satisfy item (3).

Applicant has met all of the requirements required to establish nonreceipt of an Office action.

CONCLUSION

For the reasons noted above, applicant's petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 24 July 2006 is hereby **VACATED**.

Applicant must provide a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee of \$130.00 within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time pursuant to 37 CFR 1.136 are available. **Failure to comply will result in the abandonment of this application.**

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for

¹ § 711.03(c) MPEP states, in part:

A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

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3

Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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